

Board of Contract Appeals

General Services Administration
Washington, D.C. 20405

August 4, 2005

GSBCA 16592-RELO

In the Matter of PRASAD G.K. VEGUNTA

Prasad G.K. Vegunta, M.D., Alexandria, LA, Claimant.

Randy Keuten, Supervisor, Travel Section, Department of Veterans Affairs Financial Services Center, Austin, TX, appearing for Department of Veterans Affairs.

NEILL, Board Judge.

Claimant, Dr. Prasad G.K. Vegunta, is a staff physician working for the Department of Veterans Affairs. He asks that we review his agency's partial denial of his claim for reimbursement of the commission he paid for the sale of his residence at his former duty station. For the reasons set out below, we direct the agency to pay Dr. Vegunta the entire amount claimed.

Background

In September 2004, Dr. Vegunta was transferred from the agency's medical center in Erie, Pennsylvania, to the agency's medical center in Alexandria, Louisiana. As a result of this transfer, Dr. Vegunta sold the residence he occupied at his old duty station. The home sold for \$222,000. The settlement sheet for the sale shows that the realtors assisting Dr. Vegunta in the sale of his house were entitled to a commission of six percent to be split evenly between them. However, the commission paid at settlement, as listed on line 703 of the settlement sheet, is \$10,320.

The same settlement sheet shows that an earnest money deposit of \$3000 was provided by the purchaser (line 201). This amount is listed as retained by the broker (line

507) and is among the items subtracted from the gross amount said to be due to the seller at settlement (line 420).

Dr. Vegunta contends that the \$10,320 listed on line 703 and the \$3000 retained by the broker and listed on line 507 together constitute the six percent commission of \$13,320 he was obliged to pay his realtors. The agency does not believe that the settlement sheet supports inclusion of the \$3000 earnest money deposit in the reimbursable commission. It notes that only the \$10,320 is listed on line 703 as “commission paid at settlement.” As for the \$3000 deposit, that is seen by the agency not as a cost actually incurred by claimant in selling his home but rather as one incurred and paid by the purchaser of the house. In the absence of a revised settlement sheet, the agency is not prepared to reimburse claimant for any commission beyond the \$10,320 identified as commission on line 703 of the settlement sheet.

Discussion

In support of his claim, Dr. Vegunta has provided a letter from one of the realtors listed on the settlement sheet as entitled to one half of the commission due. The letter explains that the purchaser’s deposit of \$3000 was, in fact, applied to the \$13,320 commission paid by the seller and that this is an accounting procedure used by attorneys in the region to simplify transfer of funds at settlements. The claimant’s certified public accountant has likewise explained in some detail, through two separate submissions to the Board, that working from data contained on the settlement sheet itself, it is readily demonstrated that Dr. Vegunta paid a total commission of \$13,320.

This is not the first time we have encountered the accounting procedure used to prepare the settlement sheet in this case. In *Alecia B. Scally*, GSBCA 16616-RELO (May 17, 2005), which involved a similar procedure, we recognized that the claimant was entitled to reimbursement of a commission which included an earnest money deposit originally paid by a purchaser and retained by the realtor to satisfy, in part, the realtor’s commission due at settlement. In that case we wrote:

The buyers of Ms. Scally’s house made two payments in connection with the purchase. First, when they signed the purchase contract, they paid a \$1000 deposit. Second, at settlement, they paid the balance of the purchase price to close the transaction. . . . Although the funds used to pay these amounts were originally the purchaser’s funds, all of the funds belonged to Ms. Scally when the transaction closed and whatever was retained by the real estate broker as its commission was paid from her funds.

With regard to the claim presented here, we agree with the claimant's accountant that the settlement sheet, as written, supports the conclusion that Dr. Vegunta paid a six percent commission of \$13,320. The settlement sheet shows that the commission due was six percent of \$222,000. This figure is not \$10,320 but \$13,320. The \$3000 deposit retained by the broker -- to whom the commission was payable -- when added to the \$10,320, brings the total paid or retained by the realtor to the exact amount due as commission. Furthermore, the entry on the settlement sheet showing that this \$3000 was subtracted from the gross amount due the seller at settlement clearly demonstrates that this deduction was ultimately made from funds otherwise due to Dr. Vegunta as seller.

Dr. Vegunta's claim, therefore, is granted. The \$3000 retained by the realtor is most definitely a part of the total commission paid by him.

EDWIN B. NEILL
Board Judge